

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

THE VIDEOTAPED 30(b)(6)

DEPOSITION OF GARY MURPHY, produced as a witness
on behalf of the Plaintiff in the above styled and
numbered cause, taken on the 30th day of July, 2007,
in the City of Fayetteville, County of Washington,
State of Arkansas, before me, Lisa A. Steinmeyer, a
Certified Shorthand Reporter, duly certified under
and by virtue of the laws of the State of Oklahoma.

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918-587-2878

EXHIBIT

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GARY MURPHY

having first been duly sworn to testify the truth,
the whole truth and nothing but the truth, testified
as follows:

DIRECT EXAMINATION

BY MR. GARREN:

Q Mr. Murphy, give us your full name please, for
the court.

A Gary Jack Murphy.

Q And you're currently employed; is that 09:14AM
correct?

A That's correct.

Q For whom?

A Simmons Foods.

Q How long have you been so employed? 09:14AM

A Sixteen years.

Q And what position or capacity do you hold at
this time?

A President of poultry operations.

Q What other positions have you held with the 09:14AM
company?

A I was the complex manager for the Southwest
City, Missouri location and when I first started
with the company, I was the projects manager.

Q Where is the office that you conduct your 09:14AM

1 about, and I guess what I mean to ask is, are there
2 any other people inside of Simmons that would give
3 instructions to growers besides the service tech and
4 exclusive of a written thing coming out of the
5 office?

01:28PM

6 A Probably not as far as that level.

7 Q I'm sorry. Does your live operations manager,
8 would he have an opportunity or reason to go out and
9 give instructions to growers from time to time?

10 A That's what I was referring to as far as that
11 level of management. The next level -- there's
12 actually two levels of management, live operations
13 manager and then there's a broiler manager and then
14 a service tech.

01:29PM

15 Q So any one of those three could be in a
16 position to actually give instructions is what you
17 are telling me?

01:29PM

18 A Could be. The service tech would be the one
19 that has primary opportunity to visit with the
20 growers.

01:29PM

21 Q Based upon my taking depositions of some of
22 your growers, that service tech appears at the farm
23 at least weekly, sometimes more often?

24 A That would be correct.

25 Q All right. I believe this is the first time

01:29PM

1 A Yes, sir.

2 Q Does Simmons own any dead birds at any time?

3 A No, sir.

4 Q Those are owned by whom?

5 A If dead birds can be owned, I guess it would 01:38PM
6 be a grower.

7 Q All right. That's -- does Simmons provide any
8 transportation to pick up or dispose of dead birds
9 for growers?

10 A No, sir. 01:39PM

11 Q Does Simmons in fact dispose of any dead birds
12 for growers?

13 A No, sir.

14 Q Does Simmons set the schedule for placement of
15 birds for a grower? 01:39PM

16 A Yes, sir.

17 Q And does Simmons set the schedule for the pick
18 up of those birds from the grower?

19 A Yes, sir.

20 Q Does Simmons determine the quality of the 01:39PM
21 birds being delivered to the individual growers?

22 A Yes, sir.

23 Q What I mean by that is the grower doesn't get
24 to go pick a flock and bring it back to his place,
25 does he? 01:39PM

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1 A No. Could I go back and address the placement
2 of the birds?

3 Q Yes, sir.

4 A We do schedule that, but we have situations
5 where we are and do work with growers who may have a
6 conflict of getting birds on a certain date,
7 anything from construction to they may want to take
8 a vacation and we'll push those birds off.

01:39PM

9 Q Okay, but generally speaking they get a date
10 they've got to have their houses cleaned and
11 prepared and ready for the birds on a date that
12 Simmons normally gives them?

01:40PM

13 MR. ELROD: Object to form.

14 MR. McDANIEL: Form.

15 A There are schedules that are set, of which we
16 do work with growers on that time.

01:40PM

17 Q Simmons supplies all the feed to the farm for
18 the growers?

19 A Yes, sir.

20 Q And do they in fact deliver it to the growers
21 at no cost?

01:40PM

22 A Yes, sir.

23 Q Does Simmons supply all the medication used
24 for the birds?

25 A Yes, sir.

01:40PM

1 Q Does Simmons supply the vaccinations used for
2 the birds?

3 A Yes, sir.

4 Q Does Simmons supply all the veterinary
5 services provided for the benefit of the birds?

01:40PM

6 A Yes, sir.

7 Q Does Simmons supply then a service tech as we
8 talked about before who makes these weekly or more
9 often visits?

10 A Yes, sir.

01:41PM

11 Q There's no charge for that from the grower's
12 standpoint, is there?

13 A That's correct.

14 Q Now, talking about the service techs, is it
15 correct that they supervise and advise for the care
16 and feeding and management of the flock?

01:41PM

17 A They look in on the birds and give advice to
18 the grower.

19 Q Do they inspect when they look in on the birds
20 temperature controls and/or the temperature in the
21 barn?

01:41PM

22 A On all of our houses today it's all
23 computerized and all of that information is
24 available through printouts either with the grower
25 -- primarily with the grower.

01:41PM

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1 deposition today a document named SIM AG 32198.

2 That's the only copy I have, but tell the court what
3 this document is and what it represents.

4 A This is the number of houses primarily of each
5 broiler type, breeder type and pullet type. In the 01:55PM
6 bold or in the typed print is from 2003 until
7 current, 2007. There's penciled in figures on the
8 top of the page that go from 2000 to 2002. It gives
9 the number of houses, again both active and

10 inactive, the number of head for those given years 01:56PM
11 and that number of head is for broilers. Our data
12 system didn't allow us to pick up breeder or
13 pullets.

14 Q Say that again.

15 A For instance, say, 2004 where we have 25.4 -- 01:56PM

16 Q Yes, sir.

17 A -- those are the -- that's millions of head
18 that would have been settled in the Illinois River
19 watershed.

20 Q And it's broilers only? 01:56PM

21 A Broilers only.

22 Q What -- so that I'm clear, this entire set of
23 facts deals only with the Illinois River watershed;
24 correct?

25 A Yes, sir. 01:57PM

1 Q The handwritten material at the top, do you
2 know who wrote that there?

3 A I did.

4 Q And did you have to source that information at
5 a different location as to why it's not typed?

01:57PM

6 A Not really. We had a report that we were
7 looking at and at the time we were taking the notes
8 down, we just saw -- we just picked up 2003 and then
9 further scanning back through the numbers, I just
10 went ahead and jotted down what 2001 and '2 were.

01:57PM

11 Q The number at the top under 2000 is 13.5; is
12 that correct?

13 A That's correct.

14 Q So the feed in thousand tons would be the net
15 feed after you went back to the farm and picked up
16 whatever was left and that was feed that was
17 actually used to create that flock of birds for that
18 time period?

01:57PM

19 A That number of birds, yes, sir, for that time
20 period.

01:57PM

21 Q What is the explanation for the drop in 2006
22 to 2007 of the feed in million pounds from 324 to
23 166?

24 A That 6 -- 2006 is a full year and '07 is year
25 to date.

01:58PM

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1 MR. ELROD: Rick, I know it's your
2 deposition, but I would like for the definition of
3 inactive to be on the Record while you're on this.

4 MR. GARREN: Yeah, let's just go ahead and
5 ask him.

01:58PM

6 Q What is meant by the category inactive as you
7 have placed it on this sheet and put numbers
8 underneath it?

9 A Any given time during the year if a farm does
10 not have birds -- in 2005 we were trying to -- that
11 was the year that we set as a deadline for all of
12 our growers to be tunnel cool cell. So we had
13 several houses in the watershed that elected to stop
14 growing birds and not do the retrofit. Those would
15 be considered inactive during that time period.

01:58PM

16 Q So they may have grown part of the year but
17 not the entire year?

18 A That's correct. If it was part of the year,
19 their numbers are in the head count.

20 Q All right. So to the extent that they did
21 grow some birds, they're in the count but they're
22 shown as an inactive house?

01:59PM

23 A That's correct.

24 Q The 2007, are we through six months there?

25 A Yes, sir.

01:59PM

1 Q So if we --

2 A Through seven.

3 Q Through seven, so you're going to get a number
4 very close to 2006?

5 A Be very close, yes, with the exception, and 01:59PM

6 I'll quantify that. We have two different bird

7 weights that we grow and because of that, we've

8 shifted some of the heavier birds to the south,

9 closer to our processing plant. When I say south,

10 south of Siloam Springs. They would be closer to 01:59PM

11 that processing plant. So big birds, put less birds

12 in. So it could be -- could be less than the 2006

13 number.

14 Q While we're there, you do grow broilers in

15 different sizes? 02:00PM

16 A Two different sizes.

17 Q And the largest broiler grows to?

18 A Seven and a quarter.

19 Q Seven and a quarter, and the smaller broiler

20 grows how far? 02:00PM

21 A Four and a quarter.

22 Q And that's pounds we're talking about?

23 A Yes.

24 MR. ELROD: Is that live weight?

25 A That's live weight. 02:00PM

1 Q So looking at 2007 again when you have broiler
2 houses of 207, which is considerably down from the
3 312, no inactive, am I understanding that that could
4 be the final number at the end of the year, too,
5 assuming everything stays the same? 02:01PM

6 A Yes, sir.

7 Q So there's a reduction in total number of
8 houses from 312 in the prior full year period until
9 what we see is likely to occur in '07?

10 A Could very well be, yes, sir. 02:01PM

11 Q And is there an effort or conscious effort on
12 the part of Simmons to do that in the watershed,
13 Illinois River watershed?

14 A Not a conscious effort, no, sir. It was the
15 way that the 2005 deadline came about as far as 02:01PM
16 number of growers that just elected not to grow.

17 Q And to make the improvements to a tunnel cool
18 cell house, it's a significant cash outlay for a
19 single barn, isn't it?

20 A Depends on the current condition of the 02:01PM
21 upgrade. Some farms may not cost near as much.

22 Q I've seen numbers anywhere from 26,000 roughly
23 to do a barn. Is that an estimate you're familiar
24 with?

25 A That would be in the ballpark and, again, 02:01PM

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1 depending on the age of the farm and the equipment.

2 Q If you had no cool cell tunnel ventilation, it
3 would be probably greater than that?

4 A That's true.

5 MR. ELROD: And, Rick, you realize that 02:02PM
6 going from 312 to 207 doesn't necessarily mean a
7 reduction in square footage in that same proportion?

8 MR. GARREN: Okay. Let's just have him
9 clarify that.

10 MR. ELROD: I hope I spoke correctly. 02:02PM

11 A Uh-huh, that's right.

12 Q And so you could have less barns, some of the
13 barns are newer barns and they're larger?

14 A Could very well be.

15 Q Barn size today when you build a new barn, 02:02PM
16 what is the minimum specs?

17 A Minimum spec is 43 by 500 feet.

18 Q How long has that minimum specification been
19 in place just roughly?

20 A Really since 2002, and I hesitate only because 02:02PM
21 if an individual decided to retrofit an older house,
22 we didn't recommend anything less than 16,000 square
23 feet, so --

24 Q So before that time what was the minimum
25 specs; if it wasn't 43-500, what was it? 02:03PM

1 A Typically --

2 Q Let me back up and maybe this will get us
3 quicker. Is it a wet or dry waste that comes out of
4 a breeder house versus a broiler house?

5 A It's dry but it has more moisture content than 02:29PM
6 a broiler.

7 Q You don't have facilities that generate liquid
8 waste?

9 A No, we don't.

10 Q And is Simmons in the egg producing business 02:29PM
11 for other than breeding?

12 A No, sir.

13 Q I noticed on the -- in Exhibit 31 the distance
14 from your various plants or facilities are listed.

15 Is that a mileage distance? 02:30PM

16 A Yes.

17 Q It says mileage info?

18 A Yes.

19 Q Is there a limit by which -- which one of
20 those facilities is central to determining how far a 02:30PM
21 grower can be and Simmons would contract with them?

22 A The Fairland feed mill.

23 Q How far then would Simmons go to contract with
24 somebody that is supplied from that mill?

25 A Nothing outside of a hundred miles. 02:30PM

1 A I'm not aware of anything.

2 Q Is Simmons aware?

3 A Not that I'm aware.

4 Q That would mean I as Simmons; right?

5 A I as Simmons. 03:09PM

6 Q When an investor -- let's back up. In the
7 '80's and '90's when Simmons had its own operations
8 and used contract haulers, did those contract
9 haulers actually clean the houses out themselves;
10 did they do -- did that process include putting it 03:09PM
11 in the trucks in order to haul it away?

12 A It was my understanding that there were some
13 of the contract haulers that had their own clean-out
14 crews, and there was some that actually did the
15 hauling and there were independent separate crews 03:10PM
16 for clean out. It was a combination of both.

17 Q Okay, and so Simmons didn't have its own
18 employees do the clean-out?

19 A That's correct.

20 Q What does Simmons expect or require of its 03:10PM
21 growers in the way of timing for clean out of the
22 poultry barns?

23 A Well, it's changed over a number of years.
24 Presently we would like the growers to clean out on
25 an annual basis. 03:11PM

1 with its grower?

2 A I'm not sure exactly what I did say earlier
3 this morning, but I can tell you that it's up to the
4 growers as to whether he wants to enter into the
5 contract or not.

04:07PM

6 Q They don't negotiate the terms of that
7 contract, though, do they?

8 A No, sir.

9 Q Okay.

10 A I don't disagree with that.

04:07PM

11 Q You disagree with it?

12 A I don't disagree with that.

13 Q Let's look at Exhibit 16. Have you ever seen
14 a manure management plan for water quality created
15 by the Washington County Soil and Conservation
16 District?

04:07PM

17 A Not that I can recall.

18 Q Is there anyone in Simmons -- are you talking
19 personally now or are you talking about Simmons, the
20 company?

04:08PM

21 A Personally.

22 Q Do you know whether Simmons is familiar with a
23 Washington County Soil and Water Conservation
24 District manure management plan for water quality?

25 A I don't think so but I would have to ask Joe

04:08PM

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1 A Yes, sir.

2 Q And is it in fact discharging substantially
3 less than .5 parts per million phosphorus out of
4 that facility?

5 A That's correct. 05:09PM

6 MR. GARREN: Object to the form, leading.

7 Q Are there other things we might think of later
8 given enough time?

9 A Possibly.

10 MR. ELROD: That's all I have. I'm done. 05:09PM

11 MR. GARREN: He's going to read and sign I
12 assume?

13 MR. ELROD: Yeah.

14 MR. GARREN: Before we go off the Record,
15 let's assign an exhibit number to the two pages that 05:10PM
16 are loose here. Let's mark them 15 and 38. Any
17 objection? We'll make this 3215 as Exhibit 15, the
18 corporate structure.

19 MR. ELROD: Structure is 15?

20 MR. GARREN: Yes. So the other document, 05:10PM
21 when we find it, will be 38.

22 MR. ELROD: That's the IRW stats?

23 MR. GARREN: Yes. I got it right here.
24 We'll have a copy of it. The original I think, Mr.
25 Murphy, you would have in your stack. 05:10PM

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